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CLERK, U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOUIS SHEPTIN,
Booking #10724590,

Plaintiff,

vs.

GREG ROLAIN, Chula Vista Police Dept.
Officer; COUNTY JAIL,

Defendants.

Civil No. 10-0801 BEN (CAB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Louis Sheptin ("Plaintiff"), currently detained at the San Diego County Central Jail and proceeding pro se, has initiated a civil rights action pursuant to 42 U.S.C. § 1983.

I.

Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

1 Plaintiff has not prepaid the \$350 filing fee required to commence a civil action, nor has
 2 he submitted a Motion to Proceed IFP. Therefore, the case must be dismissed pursuant to 28
 3 U.S.C. § 1914(a). *Id.*

4 II.

5 Conclusion and Order

6 For the reasons set forth above, the Court hereby:

7 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 8 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

9 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
 10 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 11 IFP which includes a certified copy of his trust account statement for the 6-month period
 12 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).¹

13 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
 14 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
 15 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
 16 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
 17 prejudice and without further Order of the Court.

18
 19
 20 DATED: 4/23/2010


 21 HON. ROGER T. BENITEZ
 22 United States District Judge
 23

24
 25 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 26 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be
 27 screened and may be dismissed pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b). *See*
 28 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not
 only permits but requires" the court to sua sponte dismiss an *in forma pauperis* complaint that fails to
 state a claim); *see also Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (discussing sua sponte
 screening required by 28 U.S.C. § 1915A(b)). Moreover, such a dismissal may be counted as a "strike"
 against Plaintiff if he requests IFP status in any future civil action filed while he is incarcerated. *See*
Andrews, 493 F.3d at 1052 (under the Prison Litigation Reform Act, "[p]risoners who have repeatedly
 brought unsuccessful suits may entirely be barred from IFP status under the three strikes rule[.]").